S.B. CIVIL Writ Petition NO. 3647/2005.
(Khetan Business Corporation Pvt. Ltd., Vs. State of Rajasthan & ors.)

DATE OF ORDER : 13.11.2007.

HON'BLE DR.JUSTICE VINEET KOTHARI

Mr. Rakesh Arora, for the petitioner.
Mr. OP Boob, Addl.G.A., for State.

1. Heard the learned counsels.

2. This petition is directed against the orders determining payment of royalty from the petitioner. The said assessment has been done under Rule 38 of the Rajasthan Minor Mineral Concession Rules, 1986. Learned counsel for the petitioner submitted that the Assessing Authority, Mining Engineer -respondent No.4 has erred in taking the entire quantity of soap stone as that of the highest grade and raising the demand of royalty at the rate of 65/- per ton under the notification Annex.3 as against Rs. 25/- per ton vide item No.37 containing these two categories in the second schedule under Section 9 of the Mines and Minerals (Regulation and Development) Act, 1957. He submits that despite a notice to this effect Annex.5 and reply thereto made by the assessee and without undertaking any inspection and physical verification, the concerned authority has assessed the amount of royalty at the

highest rate.

3. Though an appeal lies against such order under Rule 43 of the Rajasthan Minor Mineral Concession Rules, 1986, the petitioner has approached this Court directly by way of writ petition. In the reply given by the petitioner to the notice vide Annex.6, it appears that under the different mining leases granted to the petitioner, the quantity of higher grade soapstone excavated by the petitioner is around 2/3 of the total quantity excavated by him during the relevant period. For example, for mining lease No. 45/81, the higher grade soapstone was 66.67% and lower or insecticide grade was 33.33% whereas in the mining lease No. 6/89, the said higher grade was 71% and lower was 29%.

4. Therefore, without going into these questions of fact, it is considered appropriate by this Court at this stage to relegate the petitioner assessee to the appellate authority as per rule 43 of the said Rules. However, since the assessee has admitted in his reply that approximately 2/3 quantity of the mineral excavated by him during this period was of highest grade soapstone exigible to royalty at the rate of Rs. 65/- per ton which was applied, the petitioner is directed to pay 2/3 of the demand raised under the impugned orders vide Annex.7, 8 and

9. The rate of Rs. 65/- or the rate applicable to the period prior to 11.4.1997 on which date Annex.3 was issued, such rates applicable for higher grade soapstone for that relevant period as may be applicable, would be considered. The appellate authority will consider the appeal of the petitioner on merits provided the appeal is filed against the impugned orders within a period of four weeks from today. The 2/3 of the total demand paid by the assessee now will be subject to assessment against the final demand determined by the appellate authority in accordance with law. The aforesaid 2/3 of the disputed demand under the impugned order should be paid by the assessee within a period of four weeks from today irrespective of his contentions, which will be decided by the appellate authority.

5. With these observations, this writ petition is disposed of. No order as to costs.

(Dr. VINEET KOTHARI)J.

ITEM NO.10.

gandhi/-